

Title 86 Part 130 Section 130.2101 Sellers of Floor Coverings

PART 130

RETAILERS' OCCUPATION TAX

- a) Sellers who make sales of floor coverings to users in retail sale situations incur Retailers' Occupation Tax liability on their gross receipts from such sales. In retail sale situations, the seller should provide certificates of resale to suppliers and pay Retailers' Occupation Tax on his gross receipts from sales.
- b) Sellers who make sales of floor coverings to users in construction contract situations incur tax liability on the cost price of the floor coverings. In construction contract situations, the seller should pay tax in accordance with the rules set forth in paragraph (d) of this Section.
- c) Retail sale situations. The contractual relationship between the seller and his customer determines whether the floor covering has been sold in a retail sale situation or whether it has been transferred in a construction contract situation.
 - 1) In general, a sales contract that does not require the seller (or the seller's representative) to permanently affix the floor covering to real estate constitutes a "sale at retail".
 - 2) However, where the seller (or the seller's representative) will permanently affix the floor covering to real estate, the transaction remains a retail transaction if the following Safe Harbor Rule is satisfied.
 - A) Safe Harbor Rule. A contract or similar document that provides that the seller (or the seller's representative) will install the floor covering by permanently affixing it to real estate evidences a "sale at retail" where the contract or similar document demonstrates that the seller and the customer agreed to the installation charge separately from the selling price of the floor covering. The evidence required to be maintained by the seller to demonstrate that the seller and the customer agreed to the installation charge separately from the selling price of the floor covering is a contract or similar document that is signed by the customer and that sets out the following items:

selling price of floor covering
(plus) sales tax
subtotal
(plus) installation charges

total

(customer's signature)

- B) Where the Safe Harbor Rule of subsection (c)(2)(A) cannot be met only because the customer's signature does not appear on the face of a contract containing the items set out in subsection (c)(2)(A), the Department shall use its best judgment and information to determine whether the selling price of the floor covering was agreed to separately from the charge for installation. Relevant information includes, but is not limited to, situations where a written quote for installed floor covering that contains the items set out in subsection (c)(2)(A) becomes a signed purchase order. In that case, the signature on the purchase order will satisfy the signature requirement of this Section.
 - C) A contract or similar document containing the items set out in subsection (c)(2)(A) will also establish that the installation charges are not subject to Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.450(b) of this Part.
 - D) Taxation of delivery charges will be determined in accordance with the provisions of Section 130.415 of this Part.
- d) Construction contract situations. Construction contractors who permanently affix floor coverings to real estate under the terms of construction contracts incur tax liability based on their cost price of the floor covering and materials that they affix to real estate. In a construction contract situation, the construction contractor does not incur Retailers' Occupation Tax liability on his gross receipts from sale. Rather, the construction contractor incurs tax based on his cost price of the floor covering and materials transferred to his customer under the terms of the construction contract.
- 1) Safe Harbor Rule. A contract or similar document that provides that the seller (or the seller's representative) will install the floor covering by permanently affixing it to real estate evidences a "construction contract" where the contract or similar document demonstrates that the seller and the customer did not agree to the installation charge separately from the selling price of the floor covering. The evidence required to be maintained by the seller to demonstrate that the seller and the customer did not agree to the installation charge separately from the selling price of the floor covering is a contract or similar document that sets out the following items:
 - selling price of floor covering,
including installation
total
 - (presence or absence of customer's signature is immaterial)
 - 2) Generally, if the construction contractor purchases the floor covering and materials from an Illinois registered supplier, the construction contractor pays

Use Tax and applicable local occupation tax reimbursement obligations to that supplier.

- 3) If the construction contractor purchases the floor covering and materials from an out-of-state supplier not registered to collect Illinois tax, then the construction contractor must pay Use Tax directly to the Department.
- 4) If the construction contractor is a combination contractor/retailer and did not pay tax when purchasing the floor coverings and materials from an Illinois supplier by giving a certificate of resale to that supplier, the construction contractor incurs Retailers' Occupation Tax based on his cost price of the floor coverings and materials. See 86 Ill. Adm. Code 130.2075(b) of this Part.

(Source: Added at 26 Ill. Reg. 5946, effective April 15, 2002)